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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 WMCV PHASE 3, LLC, a Delaware limited
liability company,

Case No.: 2:10-cv-00661-GMN-RJJ

11
12 Plaintiff,

13 vs.
14

15 SHUSHOK & MCCOY, INC., a Texas
corporation; MATTHEW J. TRAVIS, an
16 individual; MATT TURNER, an individual;
RICHARD BIRDWELL, an individual;
17 GLOBAL ACCENTS, INC., a California
corporation; COUTURE INTERNATIONAL,
18 INC., a Quebec corporation; DOES I through X,
inclusive; ROE ENTITIES I through X,
19 inclusive,

20 Defendants.
21

22 **MOTION TO STRIKE SHUSHOK & MCCOY, INC'S ANSWER**
23 **AND APPLICATION TO ENTER DEFAULT**

24 Plaintiff WMCV PHASE 3, LLC, by and through its attorneys, Marquis Aurbach
25 Coffing, hereby submits this Motion to Strike Shushok & McCoy, Inc's Answer and Application
26 to Enter Default against Shushok & McCoy.
27
28

1 **I. INTRODUCTION**

2 Defendant Shushok & McCoy, Inc., a Texas Corporation (“Shushok”), is not represented
3 by counsel in this matter. Plaintiff requests the Court strike Shushok’s Answer, because
4 Shushok, an entity, is not permitted to represent itself in proper person. Subsequently, Plaintiff
5 requests the Court to enter Default against Shushok pursuant to Federal Rule of Civil Procedure
6 55.

7 **II. FACTUAL BACKGROUND**

8 1. Plaintiff filed its First Amended Complaint on November 4, 2010 (#33).

9 2. Shushok, by and through its attorneys Bailey Kennedy, filed its Answer to the
10 First Amended Complaint on December 2, 2010 (#40).

11 3. On March 16, 2011, Bailey Kennedy filed its Motion to Withdraw as Attorney of
12 Record (#49) for Defendants Matthew J. Travis, Matt Turner, Richard Birdwell, and Shushok
13 (collectively the “Shushok Defendants”).

14 4. The Court set the motion for hearing on April 25, 2011, and ordered the Shushok
15 Defendants to appear at the hearing (#52).

16 5. Bailey Kennedy served the Shushok Defendants with the Court’s order to appear
17 (#54).

18 6. Defendants Matthew Travis and Richard Birdwell, who do not represent Shushok
19 appeared at the April 25, 2011 hearing telephonically.

20 7. Defendant Matt Turner, who represents Shushok failed to appear at the April 25,
21 2011.

22 8. Shushok failed, either via an officer or via new legal counsel, to have
23 representation at the April 25, 2011 hearing as required by this Court’s Order (#52).

24 9. During the April 25, 2011 hearing, this Court granted Bailey Kennedy’s Motion,
25 and ordered a hearing for an order to show cause why Matt Turner failed to appear.

26 10. Additionally, the Court noted the Shushok Defendants had more than one-month
27 to obtain new counsel and put Matthew Travis and Richard Birdwell on notice that they would
28 be representing themselves in proper person.

11. Plaintiff made an oral motion during the April 25, 2011 hearing to strike Shushok's Answer to enter Default against Shushok.

12. The Court denied Plaintiff's oral motion and stated it would consider striking Shushok's Answer and entering Default in a written application.

III. LEGAL ARGUMENT

"It has been the law for the better part of two centuries, for example, *that a corporation may appear in the federal courts only through licensed counsel.*" Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 202, 113 S.Ct. 716, 721 (1993) (citations omitted, emphasis added). Courts may strike pleadings of a pro se entity pursuant to Federal Rule of Procedure 12(f) and thereafter enter default against the entity pursuant to Federal Rule of Procedure 55. See e.g. Donovan v. Road Rangers Country Junction, Inc., 736 F.2d 1004, 1005 (5th Cir. 1984) ("[The pro se party] declined to hire counsel to represent the corporation so the district court properly struck the defenses of the corporation."); see also Liberty Mutual Insurance Co. v. Hurricane Logistics Company, 216 F.R.D. 14, 16 (D.D.C. 2003) (citation omitted).

In the case at bar, the Shushok Defendants are parties without legal representation and must therefore represent themselves in proper person. Shushok however, as an entity is forbidden to represent itself in this matter. Consequently, Plaintiff respectfully requests this Court strike Shushok's Answer (# 40) and enter default against Shushok.

Dated this 26th day of April, 2011.

MARQUIS & AURBACH

/s/ Matthew T. Cecil

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CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of April, 2011, I served a copy of the foregoing
**MOTION TO STRIKE SHUSHOK & MCCOY, INC'S ANSWER AND APPLICATION
TO ENTER DEFAULT** upon each of the parties by depositing a copy of the same in a sealed
envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully prepaid, and
addressed to:

Matt Turner
c/o Shushok & McCoy, Inc.
2637 Ira E. Woods, Suite 100
Grapevine, TX 76051

Matthew Travis
3300 Tori Trail
Keller, TX 76248

Richard Birdwell
2804 Red Wolf Drive
Fort Worth, TX 76244

Shushok & McCoy, Inc.
2637 Ira E. Woods, Suite 100
Grapevine, TX 76051

Gary E. Schnitzer, Esq.
Michael B. Lee, Esq.
KRAVITZ, SCHNITZER SLOANE,
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Attorneys for Defendant Global Accents

and that there is a regular communication by mail between the place of mailing and the place(s)
so addressed.


an employee of Marquis & Aurbach